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In the Madhya Pradesh High Court

Case No : M. P. No. 383 of 1962 (J)

Gokul Prasad APPELLANT

Vs

Board of Revenue RESPONDENT

Date of Decision : 08-02-1963

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (1964) JLJ 671

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; R.J. Bhave, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.—This is a petition under articles 226 and 227 of the Constitution for the issue of a writ of certiorari for quashing an order of "recharge" made against the petitioners by the Deputy Registrar, Co-operative Societies, Bilaspur, on 1st February 196l u/s 42-D of the Co-operative Societies Act, 1912, as applied to Madhya Pradesh (hereinafter referred to as the Act), and for quashing a decision of the Board of Revenue upholding the said order of the Deputy Registrar.

2. The matter arises thus. The petitioners, while they were members of the Board of Directors of the Bilaspur Co-operative Central and Land Mortgage Bank Ltd., convened a meeting of the Board of Directors on 24th March 1959 and a general meeting for the purpose of deciding the date and place of holding elections of the office bearers of the Bank, on 10th April 1959. The Deputy Registrar taking the view that these meetings convened by the petitioners were wholly uncalled for and improper made an order of surcharge u/s 42-D or the Act making the petitioners liable for the repayment of certain amounts. Against this order the petitioners filed an appeal before the Board of Revenue, which was rejected. Thereupon they filed a petition in this Court under articles 226 and 227

of the Constitution (M. P. No. 233 of 1962), which was allowed on 18th December 1962, and decisions of the Board of Revenue and the Deputy Registrar quashed. In the appeal, which the applicants had filed before the Board of Revenue, the petitioners filed, along with the memorandum of appeal, a certified copy of a report made by the Circle Auditor which the petitioners thought had some bearing on the order of surcharge against which they had appealed. This certified copy had been obtained by the respondent-Bank at a cost of Rs. 12.75 nP. The petitioners alleged that on account of bias and prejudice against them, the Deputy Registrar Shri Lande went to Gwalior to inspect the record of the appeal which they had filed with the Board of Revenue and on finding that the petitioners had filed with the memorandum of appeal a certified copy of the Circle Auditor''s report which had been supplied to the Bank, initiated proceedings resulting in the surcharge order impugned in this petition. The applicants deposited to the credit of the Bank Rs. 12.75 nP as cost of obtaining the certified copy when they received notices from the Assistant Registrar asking them to show cause why an order of surcharge should not be made against them for using in the aforesaid appeal the certified copy of the Circle Auditor''s Report supplied to the Bank. Ultimately on 1st February 1961 the Deputy Registrar made an order u/s 42 D of the Act directing the petitioners to pay Rs. 16/- to the respondent-Bank and Rs. 30/-as cost to Government for the enquiry conducted u/s 42-D. The Deputy Registrar based his order on the ground that the petitioners had misconducted themselves in utilising the certified copy supplied to the Bank for their own personal use and thus caused a loss of Rs. 16/- to the Bank and that the fact that they had deported Rs. 12.75 nP. to the credit of the Bank after receiving notices to show cause against the making of an order u/s 42-D could not relieve them of the consequential disqualification under bye law 30 (8) of the Bank for Director-ship of the Bank The Board of Revenue agreed with this reasoning and conclusion of the Deputy Registrar.

3. In our judgment, this petition must be granted. The approach of both the Deputy Registrar and the Board of Revenue to this matter of surcharge has been altogether wrong Section 42-D of the Act, so far as it is material here, is as follows-

42-D. (1) If, in the course of an audit, inquiry, inspection, or the winding up of a registered society, it is found that any person, who is or was entrusted with the organization or management of such society or any past or present chairman, secretary, member of the committee or an officer or an employee of the society, has made any payment contrary to law or has caused any deficiency or loss by gross negligence or misconduct or has miss-appropriated or fraudulently detained any money or other property belonging to such society, the Registrar may, of his own motion or on the application of the committee, liquidator or any creditor, enquire himself or direct some person authorised by aim, by an order in writing in this behalf, to enquire into the conduct of such person within three years of the date on which the act or omission occurred or within one year of the date on which it comes to the notice of the Registrar whichever is earlier.

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(2) If on enquiry made under sub-section (1) the Registrar is satisfied that there are good grounds for an order under this sub-section, he may make an order requiring such person to repay or restore the money or property or any part thereof, with interest at such rate or to pay contribution and costs or compensation to such extent as the Registrar may consider just and equitable.

It will be seen that an order under sub-section (2) with regard to repayment of any money or restoration of any property can be made by the Registrar only after satisfying himself of the existence of good grounds for making an order under that sub-section and after finding that the person proceeded against has made any payment contrary to law or has caused any deficiency or loss by gross negligence or misconduct or has misappropriated or fraudulently retained any money or other property belonging to the Co-operative Society. Unless it is first found that the person or officer mentioned in section 42-D (1) made any payment contrary to law or caused any deficiency or loss by gross negligence or misconduct or misappropriated or fraudulently retained any money or other property belonging to the co-operative society, an order under sub-section (2 cannot be made Now, here there was no question of any payment having been made by the petitioners contrary to law. The "deficiency or loss" referred to in sub-section (1) must be one in the seance of shortage or deprivation which can never be recovered and must be the result of gross negligence or misconduct of the person against whom it is intended to make an order under sub-section (2). The action or inaction of such a person constituting gross negligence or misconduct cannot itself be "deficiency or loss" failing within the description "deficiency or loss by gross negligence or misconduct". If the deficiency or loss consists in the very act of the person sought to be made responsible under sub-section (2) then the case would be one of appropriation or retention by the person of any money or property belonging to the society. In such a case, no order under sub-section (2) can be made against the person unless it is found that he has misappropriated or fraudulently retained any money or other property belonging to the society. It will be observed that sub-section (1) of section 42-D speaks of "misappropriation or fraudulent retention" This implies appropriation or retention which is wrongful judged from the standard of honesty. The appropriation or retention of money or property must be with the intention of causing wrongful gain to the person appropriating or retaining it and wrongful loss to the society. A distinction must, however, be made between the gain or loss of property and gain or loss of the possession of the property. If the element of intention to cause wrongful gain or wrongful loss of property is absent, then the appropriation or retention of money or property would not be "misappropriation or fraudulent retention of any money or other properly" for the purposes of sub section (1).

4. In the present case, there was no loss or deficiency in relation to the certified copy. The certified copy which the Bank had obtained had not been damaged or destroyed by the petitioners. It continued to exist and the allegation against the petitioners was that they had appropriated the copy to their own use. Therefore,

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what the Deputy Registrar and the Board of Revenue had to determine was whether the use of this copy by the petitioners was misappropriation or fraudulent retention of the copy, a property belonging to the Bank The question whether the petitioners had any dishonest intention in taking away the copy from the record of the Bank and filing it in the record of appeal before the Board of Revenue had to be determined by the authorities having regard to the circumstances that the appeal filed before the Board of Revenue was not against and order embodied in the certified copy of the report of the Circle Auditor; that the copy was produced before the Board of Revenue only for perusal, and that the report of the Circle Auditor was a part of the record of the proceedings held by the Deputy Registrar and would have been available to the Board if it requisitioned the record of the proceedings before the Deputy Registrar for the disposal of the appeal filed by the petitioners. In determining whether the intention of the petitioners in using the certified copy was honest or dishonest, it would have also been legitimate for the Deputy Registrar and the Board of Revenue to give consideration to the question whether the possession of the certified copy by the petitioners was temporary or permanent. Neither the Deputy Registrar nor the Board of Revenue dealt with the matter in its proper aspect. It is true that the petitioners deposited Rs. 12.75 np. to the credit of the Bank when they received notices from the Assistant Registrar and did not instead say that they had taken the certified copy only temporarily and would return it to the Bank after the disposal of the appeal by the Board of Revenue. But the petitioner act in making this deposit under some mistaken advice and their omission to make any statement about the return of the certified copy after the disposal of the appeal could afford no justification to the Deputy Registrar to treat the petitioners act of appropriating the certified copy of the report for the purpose of the appeal as an act falling under the category of one causing "deficiency or loss by the negligence or misconduct" as explained earlier.

5. It may be that the petitioners were not right in using the certified copy of the report obtained by the Bank in the appeal which they had preferred before the Board of Revenue. But their act amounted to appropriation of the property of the Bank. In respect of this appropriation no order under sub-section (2) could be made against the petitioners without first finding whether the use of the certified copy by them amounted to misappropriation or fraudulent retention of the certified copy, a property belonging to the Bank. Neither the Deputy Registrar nor the Board of Revenue gave any finding on this question. In the absence of such a finding, the order made by the Deputy Registrar surcharging the petitioners and the decision of the Board of Revenue upholding that order cannot be sustained.

6. For these reasons, this petition is allowed, the order dated the 1st February 1961 of the Deputy Registrar and the decision dated 26th July 1962 of the Board of Revenue are both quashed. In the circumstances of the case, we leave the parties to bear their own costs. The outstanding amount of security deposit shall be refunded to the petitioners.

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